

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CARRIE ROBINSON, on Behalf of Herself
and All Others Similarly Situated,

Case No. C 05-04006 CW (MEJ)

Plaintiff,

ORDER GRANTING STIPULATION RE:
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND CLASS
NOTICE

vs.
NCO FINANCIAL SYSTEMS, INC. and
DOES 1 though 25, inclusive,

Defendants.

STIPULATION AND [PROPOSED] ORDER RE: PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND CLASS
NOTICE – C 05-04006 CW (MEJ)

1 **I. INTRODUCTION**

2 Plaintiff Carrie Robinson, by and through her counsel of record, and Defendant NCO
3 Financial Systems, Inc. (“NCO”), by and through its counsel, hereby submit this Stipulation and
4 [Proposed] Order Re: Preliminary Approval of Class Action Settlement and Class Notice. An order
5 amending certain provisions of the Settlement Agreement is necessary, as the parties learned last
6 week that notice to members of the class was not accomplished as previously believed. As outlined
7 herein and with the Court’s approval, the parties have agreed and stipulated to amending certain
8 provisions of the Settlement Agreement to ensure prompt and adequate notice will be made to the
9 class members. These changes are necessary so the proposed settlement can move forward to final
10 approval and without any ultimate prejudice to the class members.

11 Given that the Notices and the Claim Forms were not mailed on September 11, 2006 as
12 believed, the October 27, 2006 deadline for class members to exclude themselves from the class
13 and/or object to the settlement must be reset from October 27, 2006 and the December 8, 2006
14 fairness hearing must be continued. The parties also propose modifying the Settlement Agreement
15 to change the third-party vendor responsible for printing and mailing the Notices and Claim Forms.

16 **II. PREAMBLE**

17 WHEREAS, on July 13, 2006, the parties submitted the Joint Motion for Preliminary
18 Approval of Class Action Settlement. [Docket 48]

19 WHEREAS, ¶8 of the Class Action Settlement Agreement, provides that the parties agreed
20 NCO would be responsible for the printing and mailing of the Notice of Class Action and Proposed
21 Settlement (“Notice”) and the Claim Form. *See* Class Action Settlement Agreement, ¶ 8, attached
22 to the Joint Motion for Preliminary Approval at Exhibit 1.

23 WHEREAS, ¶2 of the Settlement Agreements states there are 12,424 class members. *Id.*
24 This information was provided by NCO which it believed to be accurate at the time.

25 WHEREAS, on August 9, 2006, the Court entered the Order re: Preliminary Approval of
26 Class Action Settlement (“August 9 Order”) which, among other things, provided for approval of the
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1 proposed form of Notice of Class Action and Proposed Settlement and the Claim Form. [Docket #
 2 56]

3 WHEREAS, the August 9 Order also set: (1) the date for mailing the notice and claim form
 4 at 10 days from the date of the Order; (2) the date for the class members to exclude themselves from
 5 or object to the settlement as October 10, 2006; and (3) the fairness hearing on December 8, 2006.

6 WHEREAS, on August 11, 2006, NCO requested an amendment to the August 9 Order to
 7 correct a typographical error in the preliminary approval order to provide the agreed 21-day time
 8 period for PSC to mail class members the notice and claim form. [Docket #s 57-59]

9 WHEREAS, on August 28, 2006, the Court issued an order approving NCO's requested
 10 amendment. [Docket # 76] That order also continued from October 10 to October 27, 2006 as the
 11 deadline for exclusions and objections to the settlement.

12 WHEREAS, on September 22, 2006, NCO obtained confirmation from its printing and
 13 mailing vendor, PSC, that the Notices and Claim Forms had been mailed to the class members on
 14 September 11, 2006. As of October 13, 2006, however, the Claims Administrator for this case had
 15 received only a total of five Claim Forms and no class members had contacted Class Counsel.

16 WHEREAS, NCO investigated the class mailing and determined on October 19, 2006, that
 17 an error was made by its vendor, PSC, responsible for printing and mailing to class members the
 18 Notices and Claim Forms. The failure of the process in this instance resulted from a mistake – the
 19 PSC representative chose and confirmed a proper mailing of the **wrong** data set. As a result of this
 20 error, the Notices and Claim Forms were not mailed to **any** of the class members. Instead, PSC
 21 mailed the Notices and Claim Forms to only 91 individuals unrelated to the present case.

22 WHEREAS, during this process, NCO also learned that the number of class members,
 23 previously believed to be 12,424, was actually 12,113. The discrepancy arose because 310 of the
 24 accounts had a Chase P.O. Box in place of the consumers' addresses. Consequently, the collection
 25 notices at issue were never sent to these consumers and, by definition, they are not members of the
 26 class. Additionally, the spreadsheet in which the database of accounts was maintained numbered one
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1 row which did not contain account information, thus the further reduction by one for a total of
2 12,113.

3 WHEREAS, immediately upon learning of the mailing error, Plaintiff's Counsel, Elizabeth
4 Arleo, and NCO's counsel, Debbie Kirkpatrick, jointly called the Court clerk to inform the Court of
5 the mailing error and that the parties intended to file this Stipulation and [Proposed] Order. Ms.
6 Kirkpatrick subsequently filed a Declaration Regarding Error in Class Notice and Intention to
7 Submit Joint Status Report and Recommendations. [Docket #71]

8 IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, counsel for
9 the parties in the above-entitled action, to:

- 10 (1) Amend ¶8 of the Settlement Agreement by replacing the entire existing provision with
11 the following language “At NCO’s cost, the independent third-party claims
12 administrator, First Class, Inc., will oversee the mailing of the Notices and Claim Forms,
13 attempt to locate complete and correct addresses of class members, provide an acceptable
14 affidavit of the mailing and obtain an affidavit from the U.S. Postal Service to
15 demonstrate that the correct number of letters were mailed. First Class, Inc. will also
16 conduct the mailing of the checks in compliance with the Claims Administrator, pursuant
17 to ¶11 of the Settlement Agreement.”;
- 18 (2) Amend ¶2 of the Settlement Agreement by changing “12,424 class members” to “12,113
19 class members”;
- 20 (3) Amend ¶6.D. and ¶12.B.i. of the Settlement Agreement to add “revised” before “¶8”;
- 21 (4) Wherever the “opt out/exclusion date” is referenced in the Settlement Agreement, it shall
22 be interpreted to mean any amended opt out/exclusion pursuant to the [Proposed] Order
23 contained herein;
- 24 (5) Wherever the language “Court’s entry of the Order of Preliminary Approval of Class
25 Settlement” is referenced in the Settlement Agreement, it shall now be interpreted to
26 include any subsequent order regarding preliminary approval of the class action
27 settlement;

- 1 (6) NCO will pay the maximum class disbursement of \$50 to each of the five individuals
2 unrelated to this action who returned Claim Forms which they erroneously received;
3 (7) Request that the Court continue the time for class members to object to or exclude
4 themselves from the settlement; and
5 (8) Request that the Court continue the fairness hearing from December 8, 2006.

6 DATED: November 2, 2006

Respectfully submitted,

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28 DATED: November 1, 2006

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17 NCO Financial Systems, Inc.

18 * * *

19 **ORDER**

20 PURSUANT TO STIPULATION, IT IS SO ORDERED,

21 Within 14 days of the date of this Order, First Class, Inc. shall cause a copy of the Notice and
22 Claim form to be mailed to all members of the Settlement Class;

23 The deadline for class members to exclude themselves from the class and/or object to the
24 settlement is continued from October 27, 2006 to **January 3, 2007**, approximately 60 days from the
25 date of this Order; and

26 The Fairness Hearing shall be continued from December 8, 2006 to **February 9, 2007** at
27 **10:00 a.m.**

28 Date: 11/3/06



29 CLAUDIA WILKEN
30 UNITED STATES DISTRICT JUDGE